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IN THE

SUPREME COURT OF THE UNITED STATES

No. 79-124

CLEMENT J. SHEERAN, et al.,
Petitioners,

v.

GENERAL ELECTRIC COMPANY,
a New York corporation,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

BRIEF IN OPPOSITION

JOHN GAVIN and
MICHAEL W. LEAVITT
Attorneys for Respondent

410 Miller Building
P. O. Box 2249
Yakima, WA 98907
(503) 453-9131

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BRIEF IN OPPOSITION

STATEMENT OF THE CASE

The petitioners herein seek review of an order of the United States Court of Appeals for the Ninth Circuit which affirmed an order of the United States District Court for the Eastern District of Washington dismissing petitioners' claims of estoppel.

Petitioners are former employees of General Electric at the Hanford Project located near Richland, Washington. They left the employ of General Electric during the period from 1965 to 1967. Each of the petitioners had been

employed for a sufficient length of time to obtain vested rights under the General Electric Pension Plan.

General Electric in 1967 and 1971, granted pension increases to certain, but not all, categories of participants in its Pension Plan. The amendments granting the increases specifically provided that the increases would not be granted to vestees, the category of participants which included the petitioners.

Petitioners commenced suit on April 26, 1972, in Superior Court in Benton County, Washington, alleging breach of contract and seeking a declaratory judgment that they were entitled to the increases not granted to them. The case was removed to Federal District Court. The petitioners there moved for summary judgment, which motion was denied. The determination of that motion involved the construction and application of certain provisions of the General Electric Pension Plan. The substantive issues regarding the construction and application of those provisions were thoroughly litigated and resolved against petitioners by denial of the motion. Petitioners then appealed to the Court of Appeals for the Ninth Circuit, which sustained the District Court.

Based on representations made to the Ninth Circuit Court of Appeals at the time of that appeal to the Court (73-3346), the Court in rendering its decision indicated that "inasmuch as this presumably disposes of the litigation, we assume that on remand judgment for the defendant will be entered."

Petitioners then sought in the trial court to circumvent the provisions of the written document by asserting a claim of estoppel. Of necessity the alleged representations which were asserted as a basis for such estoppel were made prior to the time petitioners left the employ of General Electric. The District Court ruled those claims were barred by the statute of limitations and dismissed petitioners' suit. Petitioners first challenged federal jurisdiction in their appeal from the dismissal of their estoppel claim.

ARGUMENT

I. THE NINTH CIRCUIT DID NOT ERR IN ITS RULING THAT PETITIONERS SHOULD HAVE RAISED THE JURISDICTIONAL ISSUE IN THEIR EARLIER APPEAL FROM DENIAL OF SUMMARY JUDGMENT.

Petitioners contend that the first time they had an opportunity to challenge jurisdiction was after a final judgment was entered by the trial

court. This contention is not well founded in light of the proceedings in this case. Petitioners' first appeal to the Ninth Circuit (No. 73-3346) was from a denial of their motion for summary judgment and was dispositive of petitioners' contentions claiming a breach of the Pension Plan. When the Ninth Circuit interpreted the plan in favor of defendant and upheld the trial court's denial of petitioners' motion for summary judgment, petitioners filed a petition for writ of certiorari (No. 74-1007), which was denied by this Court. At no time after the District Court denied their motion to remand did they raise an issue as to federal jurisdiction. Indeed, they even asserted a federal issue to support their petition to this Court for certiorari.

Unlike the petitioner in LaChemise LaCoste v. Alligator Co. Inc., 506 F.2d 339 (3rd Cir. 1974), cert. denied, 421 U.S. 937 (1975), the petitioners in this case have earlier appealed from a determination of substantive issues which appeal resulted in a final determination of petitioners' rights under the General Electric Pension Plan.

The Alligator case is distinguishable factually and legally from the instant case.

There is no genuine conflict which would necessitate review by this Court.

II. THE NINTH CIRCUIT'S DECISION IN THIS MATTER ON THE ISSUES OF JURISDICTION UNDER SECTION 301 OF THE LABOR-MANAGEMENT RELATIONS ACT DOES NOT CONFLICT WITH DECISIONS OF OTHER CIRCUITS.

There is no conflict between the decision of the Ninth Circuit in this case and that of the Seventh Circuit in the case of Union Central Life Ins. Co. v. Hamilton Steel Products, Inc., 374 F.2d 820 (7th Cir. 1967) as suggested by petitioners. Again, the cases cited by petitioners on this issue are distinguishable on their facts and on the law.

The Union Central Life case was a suit brought under the Declaratory Judgment and Interpleader Acts. It was not a suit to enforce rights allegedly arising under a pension contract or one based on an alleged violation of a collective bargaining agreement. Rather that suit was brought by a stakeholder seeking direction from the court with respect to payment of funds held in a pension trust.

This Court has already ruled that suits involving determination of rights under pension plans, which are part of collective bargaining agreements, are indeed a proper basis for

federal jurisdiction under Section 301(a). Smith v. Evening News, 371 U.S. 195, 9 L.Ed.2d 246, 83 S.Ct. 267 (1962); Allied Chemical & Alkali Workers v. Pittsburg Plate Glass Co., 404 U.S. 157, 30 L.Ed.2d 341, 92 S.Ct. 383 (1971).

Petitioners contend that this action "arises from a pension plan and not a contract between an employer and a labor organization." In this case the General Electric Pension Plan, which petitioners claim was breached, was an integral part of the collective bargaining agreements of 1963 and 1964 between General Electric and the Hanford Guards Union and the Hanford Atomic Metal Trades Council. In those collective bargaining agreements, which were exhibits in this case, the Unions accepted all of the terms and conditions of the General Electric Pension Plan and indicated that the parties had an opportunity to bargain with respect to all matters pertaining to pensions.

This Court has ruled that the word contract as it appears in Sec. 301(a) encompasses agreements which are supplemental to and referred to in a collective bargaining agreement. Retail Clerks Intl. Assn. v. Lion Dry Goods, Inc., 369 U.S. 17, 82 S.Ct. 541; 7 L.Ed.2d 503 (1962).

Accordingly, this claim by petitioners that there is a basis which would warrant granting certiorari has already been answered adversely by this Court.

III. THERE EXISTS NO CONFLICT BETWEEN THIS DECISION BY THE NINTH CIRCUIT AND THE DECISION OF OTHER CIRCUITS REGARDING PENDENT JURISDICTION.

Whether the Ninth Circuit in this case has or has not, by implication, overruled any of its prior decisions on pendent jurisdiction is not a basis for this Court to grant certiorari. Petitioners have not shown, nor can they show, that the decision of the Ninth Circuit in this case on this issue is in conflict with any decision of any other circuit.

The District Court assumed ancillary jurisdiction over those petitioners who were not members of collective bargaining units or who did not meet the prerequisites for diversity jurisdiction because their claims were identical in law and fact with those of petitioners for whom a basis for federal jurisdiction existed. For the sake of judicial economy the Court felt strongly that all claims should be before one tribunal. These factors are not dissimilar from those in the case of Hoefel v. Atlas Tack

Corp., 581 F.2d 1 (1st Cir. 1978) cert. denied (U.S. Feb. 21, 1979) (No. 78-936).

> "The Mahoney (non-union) plaintiffs claim pension rights under the same pension plan that is part of a collective bargaining agreement. Judicial interpretation of their rights therefore could be expected to influence Atlas' administration of the plan even as to the bargaining unit employees. Also, defenses raised by Atlas in suits brought by the Mahoney plaintiffs could be foreclosed by collateral estoppel in later suits by bargaining unit members. As a result, the Mahoney plaintiffs' interest 'are to a large degree inevitably intertwined with union interests.' (citations omitted) 'To exclude these claims from the ambit of Sec. 301 would stultify the congressional policy of having the administration of collective bargaining contracts accomplished under a uniform body of federal substantive law.' Id. For this reason, Sec. 301 jurisdiction properly extends to the Mahoney plaintiffs' claims. This accords with the long-established view that Sec. 301 has substantive content and is 'not to be given a narrow reading.' (citations ommitted)" at p.2.

Petitioners joined together in bringing this action as a single case. It was their choice to litigate all claims in one case. Respondent had the right to remove a substantial number of the individual claims to Federal Court. As all of the claims derive from a common nucleus of operative fact and law, it was proper that all

claims be determined in one action. United Mineworkers v. Gibbs, 383 U.S. 715, 16 L.Ed.2d 218, 86 S.Ct. 1130 (1966); Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365, 57 L.Ed.2d 274, 98 S.Ct. 715 (1978)

IV. THE DECISION OF THE NINTH CIRCUIT DOES NOT CONFLICT WITH WASHINGTON STATE LAW.

Petitioners' contention on this issue relate to the interpretation and application of two Washington Supreme Court cases. There is no showing that the interpretation of the Court of Appeals and the District Court was in error, nor that this question of interpretation and application is of sufficient importance to justify review by this Court.

In the State of Washington, causes of action based upon estoppel, misrepresentation, negligence or implied contract are actions which must be brought within three years. RCW 4.16.080. Ruth v. Dight, 75 Wn.2d 660, 453 P.2d 631 (1969); Mayer v. Herrin, 40 Wn.2d 607, 245 P.2d 187 (1952); Arneman v. Arneman, 43 Wn.2d 787, 264 P.2d 256 (1953).

Petitioners are not wholly accurate in urging in this Court that Washington does not favor the statute of limitations defense. In the same paragraph containing the dicta cited by

petitioners, the Washington Supreme Court in Guy F. Atkinson Co. v. State, 66 Wn.2d 570, 403 P.2d 880 (1965) stated:

> "This court has long and consistently held that 'the defense of the statute of limitations is not unconscionable, but is entitled to the same consideration as any other defense.'"

Petitioners claim that their suit is based fundamentally upon the written Pension Plan and that, therefore, their cause of action should be governed by the six year statute of limitations. RCW 4.16.040. In making that contention, petitioners ignore the fact that their claims based on the written Pension Plan were decided against them by the District Court and the Ninth Circuit. Petitioners sought review of that decision by the Ninth Circuit in an earlier unsuccessful petition for certiorari to this Court (No. 74-1007).

The District Court and the Ninth Circuit, after extensive briefing by the parties and considerable oral argument, concluded that petitioners' present claims did not arise out of any written agreement but must rely for support on matters external to the written agreement. The Washington Supreme Court has consistently held that the six year statute of limitations does not extend to "liabilities created

by functional processes of law, or imported into the agreement from some external source." Bicknell v. Garrett, 1 Wn.2d 564, 96 P.2d 592 (1939). Washington case law is clear that if resort must be made to matters external to a written agreement to establish a right, a cause of action based on that right, under Washington law, is governed by the three (3) year statute of limitations. RCW 4.16.080. Ingalls v. Angell, 76 Wash. 692, 136 Pac. 1154 (1913); Aall v. Riverside Irrigation District, 157 Wash. 442, 289 Pac. 22 (1930); Evans v. Yakima Valley Grape Growers Association, 52 Wn.2d 634, 328 P.2d 671 (1958); Fulle v. Boulevard Excavating, Inc., 20 Wn.App. 741, Pet. for Review denied, 91 Wn.2d 1018 (Feb. 16, 1979).

Petitioners' interpretation of the holding in this case of McDonald v. Wockner, 44 Wn.2d 261, 267 P.2d 97 (1954), and Malcom v. Yakima County Consolidated School District, 23 Wn.2d 80, 159 P.2d 394 (1945), is erroneous. The Washington Supreme Court in Restaurant Employees, Bartenders and Hotel Service Employees Welfare Fund v. Rhodes, 90 Wn.Ed. 162, 580 P.2d 611 (1978), stated that the philosophy expressed in the McDonald v. Wockner case was in harmony with the national labor policy which insulates collective

bargaining agreements from attacks based on alleged sham or oral side agreements contrary to their terms.

The decision of the District Court and the Court of Appeals in this case on the issue of the statute of limitations is in complete harmony with Washington State case law.

CONCLUSION

Petitioners have not raised any issue in their petition for writ of certiorari to this Court which have not already been throughly researched, argued, litigated and determined by the District Court and the Court of Appeals. The decision of the Court of Appeals in this case does not create a conflict with the decision of any other circuit or with the Supreme Court of the State of Washington. Respondent respectfully urges that the decision of the Ninth Circuit Court of Appeals in this matter, albeit unsatisfactory to petitioners, is legally and factually correct, is in harmony with the decisions of this Court and does not present any issue which would warrant granting certiorari. Therefore, it is urged that the petition for writ of certiorari be denied.

Dated this 8th day of August, 1979.

Respectfully submitted,

JOHN GAVIN AND
MICHAEL W. LEAVITT of GAVIN,
ROBINSON, KENDRICK, REDMAN
& MAYS, Counsel for Respondent.